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FEDERAL ELECTION COMMISSION

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OFFICE

June 28, 2013

Mr. Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination & Legal Administration  
Office of General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: MUR 6734 - Amy Goldman Fowler

Dear Mr. Jordan:

This response is submitted on behalf of Amy Goldman Fowler with respect to the May 14, 2013 letter sent by the Federal Election Commission (FEC or Commission) providing notice of the Complaint filed by Citizens for Responsibility and Ethics in Washington (CREW), Melanie Sloan, the Campaign Legal Center (CLC), and Paul S. Ryan. The Complaint appears to be based exclusively on a single news article<sup>1</sup> and not on any first-hand knowledge of a potential violation of the Federal Election Campaign Act of 1971 (FECA), as amended. Further, the violations alleged in the Complaint involve the biennial aggregate contribution limits,<sup>2</sup> which are exceptionally complex FECA provisions that are largely unknown to the public.

Mrs. Goldman Fowler is a conscientious political contributor who had no intention of violating FECA or any other law. Any potential violations of the biennial aggregate contribution limits on the part of Mrs. Goldman Fowler were inadvertent and she is willing to take corrective actions, including requesting reattribution or refunds of contributions and hiring compliance specialists to help ensure there are no future violations. Accordingly, the Commission should exercise its prosecutorial discretion and dismiss this Complaint as it applies to Mrs. Goldman Fowler. If the Commission does not dismiss Mrs. Goldman Fowler from this matter, we request alternative dispute resolution or pre-probable cause conciliation.

<sup>1</sup> See Complaint at ¶41 citing Paul Blumenthal, *Campaign Contribution Limits Broken Repeatedly in 2012 Election with No FEC Oversight*, The Huffington Post (May 3, 2013, 9:17am), [http://www.huffingtonpost.com/2013/05/03/campaign-contribution-limits\\_n\\_3132474.html](http://www.huffingtonpost.com/2013/05/03/campaign-contribution-limits_n_3132474.html) [attached at Complaint, Exhibit A].

<sup>2</sup> See Complaint at ¶43

### Statement of Facts

Amy Goldman Fowler (formerly Amy Patrice Goldman) is a philanthropist who resides in Rhinebeck, New York and New York City. Mrs. Goldman Fowler married Morgan Carrington Fowler, Jr. on April 28, 2012, and as a result changed her name from Amy Patrice Goldman to Amy Goldman Fowler. The biennial aggregate contribution limits contained in FECA are currently being challenged in a case pending before the U.S. Supreme Court.<sup>3</sup>

### Response

Mrs. Goldman Fowler is politically active and generously contributes to numerous candidates and other political causes as it is her First Amendment right to do. Prior to receiving this complaint, Mrs. Goldman Fowler was not aware of the biennial aggregate contributions limits contained in FECA. In many instances during 2011-2012, Mrs. Goldman Fowler made contributions via joint fundraising committees or earmarked through other political committees. These legal methods of making contributions make individual contributions significantly more difficult to track. The biennial aggregate contribution limits, joint fundraising committees, and earmarked contributions are obscure FECA provisions that even politically active and scrupulous citizens are not generally aware of and do not typically understand. Accordingly, any violations of the biennial aggregate contributions limits on the part of Mrs. Goldman Fowler were inadvertent and not knowing and willful.

### *The Evidence Supporting the Complaint is Weak*

The Complaint lacks any reference to personal knowledge or an affidavit from a witness to the alleged violations. The evidence supporting the Complaint appears to be one Huffington Post on-line article<sup>4</sup> and does not include any first-hand information. In fact, it is unclear whether CREW or the CLC vetted these allegations (beyond reading the Huffington Post article) prior to submitting the Complaint.<sup>5</sup> For example, item 42 in the Complaint does not identify a source for the information, and it is unclear whether the information being provided is the same as the information included in item 41 or if item 42 represents personal knowledge based upon independent research performed by CREW or the CLC. It is possible that the lack of first-hand information in the Complaint reflects the difficulty CREW and the CLC may have encountered while using the FEC database to track multiple contributions to multiple candidates - a challenge that many donors experience when trying to comply with the biennial aggregate contribution limits.

<sup>3</sup> See *McCutcheon v. Fed. Election Comm'n*, 893 F. Supp 2d 133 (D.D.C. 2012), *jurisdiction noted*, 133 S. Ct. 1747 (2013).

<sup>4</sup> See Complaint at ¶41 *supra* note 1.

<sup>5</sup> The Complaint does not provide copies of relevant FEC reports or cite to relevant FEC reports. In addition, items 2 through 8 in the Complaint appear to be unrelated to the rest of the Complaint.

*The Biennial Aggregate Limits Present a Compliance Challenge*

As previously stated, Mrs. Goldman Fowler was not aware of the biennial aggregate contribution limits and, based upon the number of other respondents in this matter, she is in good company.<sup>6</sup> In fact, the Complaint itself does not dispute that the biennial aggregate contributions limits are obscure FECA provisions that few outside of the campaign finance community understand. As Exhibit A to the Complaint points out, the alleged violations may "have been caused by simple mistakes or confusion..." and "[m]any donors may have been unaware of the overall limits..."<sup>7</sup> Exhibit A also states that "[g]iving to a joint fundraising committee can make it difficult, however, for even the most diligent donors to track where contributions are going and to make sure they are staying within the bounds of campaign finance law."<sup>8</sup> As mentioned, many of Mrs. Goldman Fowler's contributions during 2011-2012 were made via joint fundraising committees.

Interestingly, even the Commission appears to be challenged by the biennial aggregate contribution limit. FEC spokesman Christian Hilland is actually quoted in Exhibit A as saying, "[i]f you can imagine trying to aggregate one person across hundreds of--thousands--of committees with different spellings, addresses. It would be quite challenging to do that."<sup>9</sup> If the Commission thinks the biennial aggregate contribution limits are a challenge, then even an experienced political contributor will almost certainly be confused by these limits - if they are even aware of them. Furthermore, even diligent monitoring of the FEC contributions data base will often yield outdated or incomplete contribution information. The biennial aggregate contribution limits are not merely obscure, complicated, and difficult to monitor- they may very well be unconstitutional.

*The Biennial Limits May be Unconstitutional*

As you are aware, *McCutcheon v. Federal Election Commission*<sup>10</sup> will be considered by the Supreme Court in October 2013. At issue in this case is whether the biennial aggregate contribution limits violate the First Amendment. And while it is unclear what the outcome of the case will be, recent Supreme Court decisions leave little doubt that the current Court will not hesitate to strike down FECA provisions and Commission regulations that impermissibly burden political speech. Accordingly, it would be inappropriate for the Commission to require Mrs. Goldman Fowler to endure the stress and expense of a full-blown FEC enforcement action based solely upon alleged violations of a statute that may be found to be unconstitutional either during or after the investigation.

<sup>6</sup> See Complaint at ¶¶9-42 (listing thirty-two individual respondents)

<sup>7</sup> Complaint at Exhibit A, ¶¶ 6 & 31.

<sup>8</sup> *Id.* at Exhibit A, ¶ 39.

<sup>9</sup> *Id.* at Exhibit A, ¶ 50.

<sup>10</sup> 893 F. Supp 2d 133, *jurisdiction noted*, 133 S. Ct. 1747.

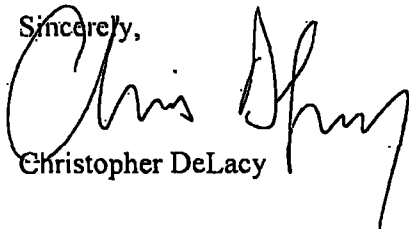
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### Conclusion

Based upon the weakness of the complaint, the confusing nature of the biennial aggregate contribution limits, and the pending Supreme Court review of the same limits, it would be inappropriate to punish Mrs. Goldman Fowler for any inadvertent violation of these limits, particularly because she is willing to take corrective actions to resolve any outstanding violations and take steps to prevent any violations in the future. Accordingly, the Commission should exercise its prosecutorial discretion and dismiss Mrs. Goldman Fowler from this matter.

Thank you.

Sincerely,

  
Christopher DeLacy